

VIA ECF

The Honorable Arun Subramanian
United States District Judge
United States District Court, Southern District of New York
500 Pearl Street, Courtroom 15A
New York, NY 10007

Re: *United States, et al. v. Live Nation Entertainment, Inc., et al.*, No. 1:24-cv-03973

Dear Judge Subramanian:

Plaintiffs and Defendants submit this joint letter advising the Court of each of the parties' proposed topics for discussion at the October 29, 2024 telephonic conference. The parties also write to jointly request relief from the requirement for teleconferences that "[n]o more than one individual be designated to speak on behalf of each party" per Rule 4.B.i of the Court's Individual Practices in Civil Cases. Instead, the parties request that representatives from each party be permitted to speak on behalf of the parties on an issue-by-issue basis, as identified below.

I. Plaintiffs' Issues for Discussion at the Conference

- 1. Plaintiffs' October 23, 2024, Letter-Motion to Compel Interim Deadlines and Custodians (ECF 320). [John Thornburgh & Hamilton Millwee (TN) (Plaintiffs) / Tim O'Mara (Defendants)].**
 - a. Plaintiffs' Position: Plaintiffs respectfully request the Court (1) impose interim deadlines to ensure that Defendants timely meet their discovery obligations; and (2) order Defendants to search documents of properly identified custodians whose documents were not produced in the pre-Complaint investigation and who have documents directly relevant to Plaintiffs' claims.
 - b. Defendants' Position: The dispute here is not genuinely about interim deadlines and specific custodians, but rather (a) the fact that Plaintiffs are insisting on custodians, time periods, and search terms that result in an estimated review set of well over 10 million documents, (b) what type of technology assisted review is used to complete the process (TAR 1.0 vs. TAR 2.0), and (c) whether Defendants must spend in excess of \$20 million on reviewing and producing documents for this litigation and the preceding investigation.
- 2. Defendants' withholding of documents on privilege grounds in response to Plaintiffs' Request for Production No. 2. [Brian White & Jeremy Kasha (NY) (Plaintiffs) / Tim O'Mara (Defendants)].**
 - a. Plaintiffs' Position: Defendants have withheld from production documents that were disclosed to at least one third party not represented

by Defendants' counsel and therefore are not entitled to attorney client or work product privilege

- b. Defendants' Position: Defendants have produced a log demonstrating that these communications are privileged documents protected from disclosure pursuant to the common interest doctrine.

II. Defendants' Issues for Discussion at the Conference

1. Defendants' Letter Motion to Amend the Protective Order (ECF No. 319). [Brian White & Jeremy Kasha (NY) (Plaintiffs) / Jesse Weiss (Defendants)].

- a. Defendants' Position: Defendants seek a narrow amendment to the Protective Order as reflected in the letter motion.
- b. Plaintiffs' Position: Plaintiffs oppose Defendants' amendment and offer a counter-proposal that better protects the legitimate interests of producing non-parties while still permitting Defendants to prepare their defense; Plaintiffs believe that any amendment needs to allow affected non-parties notice and an opportunity to be heard.

2. Update on Defendants' Request for Contention Interrogatories. [Jennie Roualet & Adam Gitlin (DC) (Plaintiffs) / David Marriott (Defendants)].

- a. Defendants' Position: Defendants have requested that (1) Plaintiffs confirm they will provide one or more witnesses to sit for a Rule 30(b)(6) deposition on appropriate topics (and Defendants provided an illustrative list of such topics) and (2) by the deadline for interrogatories (February 27, 2025), Plaintiffs will provide additional information about the over 130 entities they have subpoenaed; the parties are continuing to discuss these requests, but in the event Defendants are not able to secure the information they need from Plaintiffs through these mechanisms, Defendants anticipate renewing their request for contention interrogatories at the appropriate time.
- b. Plaintiffs' Position: Defendants' request for a 30(b)(6) deposition of Plaintiffs is premature—and Defendants have not yet identified topics that, as framed, would be appropriate for such a deposition—but the parties are still conferring on the issue, and if we reach an impasse, Plaintiffs request the opportunity to brief the issue; regarding the subpoenas, although Plaintiffs believe that Defendants are already in possession of the information they need to understand the relevance, they will provide additional information.

[signatures on following page]

Dated: October 25, 2024

Respectfully submitted,

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